

federal register

FRIDAY, JULY 23, 1976



PART III:

DEPARTMENT OF LABOR

**Employment and Training
Administration**



STANDARD FOR BENEFIT PAYMENT — PROMPTNESS— UNEMPLOYMENT COMPENSATION

Final Regulations

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 640—STANDARD FOR BENEFIT PAYMENT PROMPTNESS—UNEMPLOYMENT COMPENSATION

Final Regulations

On March 5, 1976, notice of proposed rulemaking was published in the *FEDERAL REGISTER* (41 FR 9559) to establish a Benefit Payment Promptness Standard for the Federal-State Unemployment Compensation Program, in new Part 640 of Chapter V, Title 20, Code of Federal Regulations.

As proposed, the Standard in new Part 640 would require that the State laws provide for such administration of the benefit payment process as will reasonably insure the payment of unemployment compensation to eligible individuals with the greatest promptness that is administratively feasible. Criteria for first payments were specified, which if met by a State, would constitute substantial compliance with the Standard. The criterion for intrastate claims would require that 80 percent of first benefit payments be made within 14 days of the end of the first compensable week. The criterion for interstate claims would require that 60 percent of first benefit payments be made within 14 days of the end of the first compensable week.

Comments on the new Part 640 were invited with a closing date of April 4, 1976, for receipt of comments. Within the time limit comments were received from six State agencies, one union and six legal aid and legal services groups in six States. Other comments were received after the time limit, and although the late comments cannot be considered there were no substantially different points made in the late comments that were not included in the comments received within the time limit. All of the comments received within the time limit have been considered, but the recommendations were not adopted for the following reasons:

1. Some States expressed concern with the interstate criterion because in many cases the delays are attributable to the agent State or to the postal service. It was suggested that two interstate criteria be established; one for agent State processing and one for liable State processing, or that the interstate criterion be lower.

The Department of Labor appreciates the problem involved in processing interstate claims. The establishment of two independent criteria, however, would not lend itself to a realistic assessment of the percentage of payments made within a prescribed time frame as each liable State is served by many agent States and the workloads in the agent States are widely dispersed among the liable States. The end result of having two criteria would not provide statistical data which would effectively depict the number of claimants not receiving benefits promptly.

With respect to lowering the interstate criterion, it is the Department's opinion that the 60 percent criterion is realistic and attainable. The remedy for the interstate time lapse problem is not to lower the criterion, but to develop and implement improved interstate claim procedures geared toward prompt payment of benefits.

2. A number of State agencies contended that it is inequitable to use the same criteria as the basis for measuring the promptness of benefit payments in both waiting week and non-waiting week States. They suggested that non-waiting week States be given 21 days instead of 14 days for making first payments, because the Department of Labor has encouraged States to eliminate the waiting week, yet those States with no waiting week requirement are penalized on time lapse.

The Department of Labor has reviewed time lapse experience for the past five years. Analysis has shown that non-waiting week States are capable of meeting the proposed time lapse criteria. The Department is of the opinion that if non-waiting week States can pay benefits within 14 days, waiting week States should be capable of paying benefits in less time. The problem to date is that data are not available on other than a 14-day basis. The Department has undertaken a study encompassing 16 State agencies to obtain reliable data on the number of days within which payments should be made. The Department will review the interstate criterion when the study data are available and have been analyzed. Part 640 will be republished in the *FEDERAL REGISTER* by March 1977 and will include such revisions as appear to be supported by studies and experience.

3. Several interested persons argued that the proposed criteria (80 percent intrastate and 60 percent interstate) are too low. The proposed criteria, it was pointed out, actually represented an acceptance as adequate of lesser promptness in first payments than that specified in the previously established operating guidelines (86 percent intrastate and 67 percent interstate) contained in General Administration Letter No. 1504, dated February 7, 1974. Recommendations ranged from maintaining the levels set in the operating guidelines, to requiring 100 percent of first payments to be made within the 14-day time limit. Concern also was expressed over the lack of criteria for the remaining 20 percent and 40 percent of the claimants (intrastate and interstate, respectively) who did not receive first payments within the 14-day limit. Graduated criteria were suggested.

The Department of Labor shares the objective of prompt payment of unemployment benefits when due. The 80 percent intrastate and 60 percent interstate criteria do not signify any relaxation of the Department's firm resolve to attain the greatest degree of promptness in the payment of benefits that is administratively feasible. The Department of Labor established performance requirements of 80 percent for the intrastate program,

and 60 percent for the interstate program, based on analysis of the most recently available data. It is and has been the responsibility of the Department to determine realistic and adequate performance criteria that the State employment security agencies are expected to meet. In establishing sound and realistic criteria, the Department must be responsive to changing legal and economic conditions under which the program operates, as well as the level of claim workloads experienced. For such reasons, criteria must be under continuing review and be revised as necessary to reflect the changing conditions. The 80 percent and 60 percent criteria reflect the impact of such changes since the 1960's when the 86 percent and 67 percent were developed. The Department's concern over the prompt payment of benefits has resulted in a major undertaking involving in-depth studies in 16 State agencies. Data from these studies will be analyzed and if warranted new criteria will be established and published in the *FEDERAL REGISTER* in March 1977. Data being collected will provide the Department with information which may result in the setting up of graduated criteria.

4. One comment concerned the concept of substantial compliance as a requirement on the States, rather than the total compliance allegedly required by the *Java* decision of the U.S. Supreme Court and section 303(a)(1) of the Social Security Act. According to the comment, substantial compliance implicitly suggests that a degree of noncompliance or unreasonableness will be tolerated—contrary to *Java* and Federal law which require that a State must comply.

Section 303(a)(1) requires that a State law include such methods of administration as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due. There must be complete conformity with this requirement. All State laws either specifically provide for such methods of administration or are interpreted as requiring such methods as are necessary to conform with this requirement. Section 303(b)(2) requires application of sanctions when the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency, finds that in the administration of the law there is a failure to comply substantially with any provisions specified in 303(a) including, of course, 303(a)(1) described above. The Standard represents our best judgment at this time of what reasonably constitutes substantial compliance with the "when due" requirement. A requirement of total compliance with the requirements of section 303(a) (e.g., a requirement that takes no account of factors beyond an agency's control) would not only be unrealistic, but would clearly not accord with the statute.

5. A comment concerning the need for criteria encompassing the speed with which both eligible and ineligible monetary determinations are made was received. The process in which claims are taken and monetary determinations of

eligibility or ineligibility are made will automatically result in speedy ineligible monetary determinations when first benefit payment promptness is adequate. This occurs automatically because there is no reasonable way to identify whether claimants are eligible or ineligible until a monetary determination is made; therefore, by requiring prompt payment in all cases, monetary determinations of ineligibility will be issued promptly as will monetary determinations of eligibility.

6. Some comments raised the issue of setting promptness criteria for subsequent benefit payments as well as first benefit payments. Past studies have indicated that: (1) first benefit payment promptness performance correlates with subsequent payment performance so that when first payment promptness is adequate so is subsequent payment performance; and (2) the variance between States with respect to subsequent payment promptness is negligible. Since such studies were conducted early in the 1960's and study data is no longer available, we believe that further studies are needed to recheck these findings and to determine whether subsequent payment promptness criteria are needed. Such studies will be conducted prior to the republication of the Standard in March 1977, and the republished Standard will reflect a determination of the feasibility of establishing subsequent payment criteria.

7. A comment was received requesting that "uncontrollable delays" as mentioned in the Background of the published Proposed Standard be defined.

Past experience shows that such things as backdating of claims when done for reasons other than agency error, claimant delay in providing required information to process the claim, and delay in postal service are factors considered to be beyond the agency's control. However, not all specific uncontrollable delays can be identified until such time as data from the previously mentioned 16-States study are gathered and analyzed.

8. A comment was received addressing the Department's requirement that annual plans for improving time lapse be submitted by States below the 80 percent and 60 percent level.

The Department receives monthly, quarterly and annual statistical reports with respect to promptness of first payments. Continuation of these reports will be required under the Standard. These reports will be continually reviewed and the trend of agency performance assessed. Whenever the statistical data show a need for Federal action to assist States in improving benefit payment promptness, such assistance will be made available. In addition to the routine submittal of statistical reports for review, a State will be required to submit, during the fiscal year program budget planning process, its plan for improving benefit payment promptness when the most recent data show the State is below the 60 percent or 80 percent criteria. Federal staff will review the plan

and monitor State progress in adhering to the plan throughout the fiscal year.

9. States which operate under a request reporting system (one which requires the agency to request wage data from employers on an as needed basis when a claimant files a claim) instead of the wage record system (one where employers report wage information on a quarterly basis) have requested that their system be given special recognition as it is more difficult for them to meet the 80 percent and 60 percent criteria.

A review of benefit payment promptness data from request reporting States shows that the criteria can be achieved. In addition, if a State is having difficulty in meeting the criteria due to operating procedures (even if based on State law), the State should make the necessary changes to assure that the 80 percent and 60 percent criteria are met.

10. A question was raised concerning the statutory remedy which the Department can take with respect to the withdrawal of Federal administrative funds when a State is not meeting the Standard. Such action, it was pointed out, would result in penalizing claimants since the State agency would, without funds, be unable to process claims.

State officials are as concerned about improving benefit payment promptness as are Department officials. The unique working relationship between the State and Federal partners has resulted over the years in a high degree of cooperation, and the Department is confident of the continued cooperation of the States in achieving the objective of the Standard.

Denial of certification of granted funds is the statutorily prescribed consequence, however, when a State law fails to conform with Federal requirements or when a State in administering its law fails to comply substantially with any provisions required by the Federal law. Prior to undertaking the steps necessary to defund a State program, the Department would, as it always has done, attempt to resolve the matter by informal discussion as set forth in 20 CFR 601.5(b). Therefore, in the case of a failure or refusal to conform with the Standard, or failure or refusal to comply substantially with its requirement, the Department would work with State officials to achieve conformity in the State law or compliance in administration of the program. The Department would make reviews of agency operations, provide recommended improvements and monitor the implementation of such recommendations, with the expectation that the desired results would be achieved without the necessity of invoking the sanction of the law.

11. A comment was received concerning the application of the Standard to the programs of Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemen (UCX), Federal Supplemental Benefits (FSB), and Special Unemployment Assistance (SUA).

The Benefit Payment Promptness Standard directly applies only to the

Federal-State Unemployment Compensation Program. Its applicability to other unemployment benefit programs is by virtue of the laws and regulations governing the other programs. Therefore, to the extent that the laws and regulations for the other programs incorporate this Standard, it applies to the other programs.

New Part 640 of Chapter V, Title 20, of the Code of Federal Regulations, accordingly is adopted without change as set forth below.

Effective date: August 23, 1976.

Signed at Washington, D.C., on July 19, 1976.

WILLIAM H. KOLBERG,
Assistant Secretary for
Employment and Training.

PART 640—STANDARD FOR BENEFIT PAYMENT PROMPTNESS—UNEMPLOY- MENT COMPENSATION

- Sec.
- 640.1 Purpose and scope of the standard.
- 640.2 Federal law requirements.
- 640.3 Secretary's interpretation of Federal law requirements.
- 640.4 Secretary's Standard.
- 640.5 Criteria for State compliance.
- 640.6 Review of State compliance.
- 640.7 Annual Benefit Payment Performance Plan.

AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); Secretary's Order No. 4-75, dated April 16, 1975; Interpret and apply sec. 303(a) (1) and 303(b) (2) of the Social Security Act (42 U.S.C. 503(a) (1), 503(b) (2)).

§ 640.1 Purpose and scope of the Standard.

(a) *Purpose.* This Standard is responsive to the overriding concern of the United States Supreme Court in "California Department of Human Resources Development v. Java", 402 U.S. 121 (1971), and that of other courts with delays in the payment of unemployment compensation to eligible individuals. The Standard in this Part seeks to insure that unemployment compensation is paid to eligible individuals with the greatest promptness that is administratively feasible.

(b) *Scope.* The Standard specified in § 640.4 applies to all claims for unemployment compensation. The criteria for State compliance in §§ 640.5 apply to first payments of unemployment compensation to eligible claimants following the filing of initial claims and first compensable claims.

§ 640.2 Federal law requirements.

(a) *Conformity.* Section 303(a) (1) of the Social Security Act requires that a State unemployment compensation law include provision for—

Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) *Compliance.* Section 303(b) (2) of the Social Security Act provides that:

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing

to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) * * *

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State * * *.

§ 640.3 Secretary's interpretation of Federal law requirements.

(a) *Section 303(a)(1)*. The Secretary interprets section 303(a)(1) of the Social Security Act to require that a State law include provision for such methods of administration as will reasonably insure the full payment of unemployment compensation to eligible claimants with the greatest promptness that is administratively feasible.

(b) *Section 303(b)(2)*. The Secretary interprets section 303(b)(2) of the Social Security Act to require a State to comply

substantially with the provision required by section 303(a)(1), as specified in paragraph (a) of this section.

§ 640.4 Secretary's Standard.

A State law will satisfy the requirement of section 303(a)(1), as specified in § 640.3(a), if, after September 30, 1976, it contains a provision requiring, or is construed to require, such methods of administration as will reasonably insure the full payment of unemployment compensation to eligible claimants with the greatest promptness that is administratively feasible.

§ 640.5 Criteria for State compliance.

A State will be deemed to comply substantially with the requirement set forth in § 640.4 if, for the fiscal year 1977, and for each fiscal year thereafter—

(a) It has issued 80 percent of first benefit payments on all intrastate claims within 14 days after the end of the first compensable week, and

(b) It has issued 60 percent of first benefit payments on all interstate claims within 14 days after the end of the first compensable week.

§ 640.6 Review of State compliance.

A State's compliance will be assessed for each fiscal year on a cumulative monthly basis from data reported monthly as required by sections 2600-2699, Part III, "Employment Security Manual."

§ 640.7 Annual Benefit Payment Performance Plan.

(a) *Fiscal year 1977*. Every State that has not, for the 12-month period ending on June 30, 1976, met the criteria specified in § 640.5, shall submit, no later than September 30, 1976, an Annual Benefit Payment Performance Plan of action showing how it will operate so as to meet those criteria beginning with the first quarter of fiscal year 1977.

(b) *Subsequent fiscal years*. No later than September 30, 1977, and the 30th day of September of each ensuing year, each State that has not, for the 12-month period ending the preceding June 30, met the criteria specified in § 640.5, shall submit an Annual Benefit Payment Performance Plan of action showing how it will operate so as to meet those criteria beginning with the next ensuing fiscal year.

[FR Doc.76-21345 Filed 7-22-76;8:45 am]